

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
OLYMPUS SECURITIES, LLC,

Plaintiff,

-against-

Civil Action No.:
16-cv-01931-VEC

UNITED FIBER & DATA, LLC,

Defendant.

-----x

CONFIDENTIAL

DEPOSITION OF

DAVID BARRY BORIS

New York, New York

December 22, 2016

9:33 a.m.

Reported by:
JUDITH CASTORE, CLR
Job No. 48097

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2 of raising institutional capital from
3 exactly the type of investors that UFD
4 wanted in their transaction.

5 When I learned, through our
6 diligence and which I still believe
7 should have been disclosed up front to
8 any potential advisor, but that's
9 another story -- so when we learned in
10 diligence that Mr. Hynes had a previous
11 conviction and had served jail time for
12 financial wrongdoings, I relayed to
13 Mr. Taylor that -- in my opinion, that
14 institutional investors are going to
15 have a problem with that, since most
16 institutional investors -- or many
17 institutional investors are
18 fiduciaries; if they invest in a
19 transaction or -- or take it back.

20 Most institutional investors
21 are managing money for other clients.
22 If they make an investment and for some
23 reason that investment does not work
24 out to be successful, people look to
25 say, What went wrong?

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2 And if you invest in a
3 company where one of the members of the
4 board of directors has been found
5 guilty of financial fraud, that is
6 going to be a hard thing for an
7 investor to explain to their investors
8 as to why they got involved in a
9 company that had that -- that
10 management.

11 And I explained to
12 Mr. Taylor, and I explained directly to
13 Mr. Hynes -- probably on that same
14 phone call, but I'm not sure -- that I
15 wasn't here to pass judgment on
16 Mr. Hynes. I don't really care whether
17 he was guilty or innocent of the crime
18 he was convicted for, but that if he --
19 if UFD wanted the institutional
20 investors, in their transaction, that I
21 believed -- and it's my belief, that
22 having a person with Mr. Hynes's issues
23 on the board of directors would
24 preclude that company from passing
25 diligence by most reputable

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2 institutions.

3 So, if Mr. Hynes wanted a
4 transaction to complete that he should
5 not be a part of the management, he
6 should not be a part of the board. We
7 were not looking to take away any
8 economics, not looking to take away his
9 equity, not looking to change his
10 day-to-day position in managing the
11 real estate at UFD, but simply to say
12 that that person should not be a
13 director of the company which Mr. Hynes
14 did not agree with and which the rest
15 of UFD, we were told, strongly did
16 agree with, to the point where we --
17 there were several next steps.

18 First, we were told that a
19 board resolution would be passed in
20 which it was clear that Mr. Hynes was
21 not the point person, and that Chad
22 Taylor was. And, I think, our input
23 from Olympus's side was that that was
24 not good enough to accomplish the goal
25 of what they're looking for.

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2 et cetera.

3 Q Did you indicate to UFD that
4 you did not wish to be contacted by
5 Mr. Hynes?

6 A I may have. I don't recall
7 that specifically, but the phone call
8 with Mr. Hynes where I told him that --
9 as nicely as I could, that I wasn't
10 here to pass judgment on him and I -- I
11 really don't care what he did in his
12 life -- and, you know, whatever he did,
13 he paid whatever appropriate penalty
14 that a court of law decided, not my
15 judgment -- but that it was my judgment
16 that his activity would be an
17 impediment to bringing in the type of
18 investor that his partners wanted to
19 bring in.

20 And he was, you know, very
21 abusive on that call, and I made it
22 clear that I did not appreciate that.

23 Q In what way was he abusive on
24 that call?

25 A He strongly disagreed,

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2 uses -- I don't recall specifically the
3 language he uses -- but was -- was,
4 let's say was not showing his
5 appreciation for how hard Olympus and I
6 had worked, and how bringing in one of
7 the world's top investors and bringing
8 in a world-class CEO, which would have
9 resulted in creation of tens of
10 millions, or potentially, hundreds of
11 millions of dollars of value for
12 Mr. Hynes and his partners; instead,
13 Mr. Hynes was basically personally
14 attacking me on -- on that call.

15 And I said, I'm not
16 interested in dealing with that. It's
17 not -- not what I did sign up for.

18 Q Did you ever communicate to
19 UFD that you were no longer interested
20 in doing business with them?

21 A No.

22 Q You mentioned reviewing draft
23 Letters of Resignation drafted by
24 Mr. Paxton; is that right?

25 A Mr. Paxton sent me an e-mail,

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2 I believe, of a resolution, or a
3 resignation, that we were told Olympus
4 was told that Mr. Hynes was going to
5 sign, which upon the execution of a
6 term sheet with an institutional
7 investor, he would leave the board of
8 directors.

9 MR. ROSS: Is this a good
10 time for us to take our break, or
11 would you rather take it in ten
12 minutes or so?

13 MS. PIRO: Yes. Ten minutes.

14 MR. ROSS: That's totally
15 fine.

16 MS. PIRO: Marking these
17 exhibits as Exhibit Nos. 6 and 7,
18 respectively. Exhibit 6 is a
19 document bearing Bates
20 No. OS0001730.

21 Exhibit 7 is a document with
22 Bates stamp OS0001732.

23 (Document, Bates stamped
24 0001730 through 1731, was marked
25 Defendant's Exhibit 6, for